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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Michael V. Withers,

No. CV-17-03391-PHX-DWL (JZB)

10 Plaintiff,

ORDER

11 v.

12 Beecken Petty O'Keefe & Company, et al.,

13 Defendants.

14

15 Plaintiff filed this lawsuit on September 6, 2017. On June 11, 2019, Defendants
16 Corizon Incorporated, Joanna Grafton-Burns, and Sharon Kary (“Defendants”) filed a
17 motion for summary judgment (Doc. 102) and accompanying statement of facts (Doc.
18 103).

19 On August 29, 2019, Plaintiff filed a response to the motion for summary
20 judgment (Doc. 122) and controverting statement of facts (Doc. 123). Plaintiff objected
21 to Defendants’ omission of evidence from Plaintiff’s medical records, and on January 21,
22 2020, the Court ruled that “[w]here, as here, Defendants refer to—but fail to attach—
23 relevant evidence from outside specialists, Defendants cannot show they provided proper
24 medical care for Plaintiff’s serious medical needs, and they deprive Plaintiff of evidence
25 that could potentially show otherwise.” (Doc. 133 at 2.) The Court ordered that
26 “Defendants must, at a minimum, serve Plaintiff” with several categories of “known
27 missing documents” and ordered Defendants to “amend their Statement of Facts and
28 supplement their exhibits accordingly. (*Id.* at 3.) The Court also ordered Defendants to

1 cite to specific portions of the record. (*Id.* at 3-4.) The Court, cognizant of how long this
2 case had already been pending, set an expedited schedule: Defendants were required to
3 serve Plaintiff with the missing exhibits and file an amended statement of facts within 7
4 days, and then Plaintiff had 7 days to file a controverting statement of facts limited to
5 Defendants' amended facts and additional exhibits. (*Id.* at 4.) Following these two 7-day
6 periods, the motion finally would be ripe for review. (*Id.*)

7 Defendants' missing exhibits and amended statement of facts should have been
8 served and filed on Tuesday, January 21, 2020. Defendants failed to file the missing
9 exhibits and amended statement of facts within the 7-day timeframe ordered by the Court
10 and instead filed them 2 days late, on Thursday, January 30, 2020. (Docs. 135, 136.) On
11 February 5, 2020, Plaintiff filed a motion for sanctions, requesting that the Court render a
12 default judgment as a sanction, pursuant to Rule 11 and Rule 37(b). (Doc. 137 at 2-3.)

13 On February 7, 2020, Plaintiff filed a motion for extension of time, seeking a 30-
14 day extension to file his controverting statement of facts. (Doc. 138.) Plaintiff stated that
15 he did not receive Defendants' missing exhibits and amended statement of facts until
16 February 3, 2020. (*Id.*; *see also* Doc. 137 at 1.) The amended statement of facts and
17 accompanying exhibits include 593 pages. (Docs. 135, 135-1, 135-2, 135-3, 135-4, 135-
18 5). The Court will grant in part Plaintiff's motion for extension of time and extend
19 Plaintiff's deadline to file his controverting statement of facts to March 3, 2020.

20 Defendants' notice to the Court regarding the missing documentation (Doc. 136)
21 failed to acknowledge or apologize for the two-day delay in filing the missing exhibits
22 and amended statement of facts. Nevertheless, the delay was very short, and the Court
23 has granted Plaintiff an extension of time to respond, so there is no prejudice. The Court
24 will deny the motion for sanctions.

25 Accordingly,

26 **IT IS ORDERED** that Plaintiff's motion for sanctions (Doc. 137) is denied.

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1 **IT IS FURTHER ORDERED** that Plaintiff's motion for extension of time (Doc.
2 138) is granted. Plaintiff's deadline to file his controverting statement of facts is
3 extended to **March 3, 2020**.

4 Dated this 11th day of February, 2020.


Dominic W. Lanza
United States District Judge